REMARKS

Claims 1-16 are pending and subject to restriction in the above-identifed application. Applicants request consideration and entry into the record of the following amendments and remarks.

In summary, the Examiner has required restriction of the present invention to one of sixteen groups, identified as Groups I to XVI in the April 30, 2004 Office Action, and a respective selection of a corresponding species election.

Applicants note for the record that the Examiner restricted cancelled claims 1-16, instead of the correct pending set of claims 17-34, which were set forth in the July 25, 2000 Preliminary Amendment. A copy of the July 25, 2000 Preliminary Amendment is attached herewith.

In light of the foregoing, applicants request that a new restriction requirement be issued based upon pending claims 17-34 and that the record and pendency time be corrected to reflect this error.

However, to be fully responsive to the April 30, 2004 restriction requirement, applicants provisionally elect, with traverse, to prosecute:

[1] Group I: "Claims 1, 4-11 and 15 drawn in part to methods of using compounds according to Formula (I), wherein A and B are C, classified in various subclasses of class 514"; and

[2] the species identified as [3R,4R]-1-Heptyl-3-Hydroxymethyl-4-{3-(6-Methoxyquinolin-4-yl)propyl]piperidine (see, Example 87 at page 66, lines 26 to 35 to page 67, lines 1-20 of the specification).

The Examiner indicated a restriction was required under PCT Rules 13.1 and 13.2, as the claimed inventions of Groups I-XVI do not relate to a single general inventive concept for lacking the same or corresponding special technical features that define a contribution over the prior art. In particular, the Examiner maintains that the claimed invention does not possess a substantial common core in light of the compound structure(s) cited in U.S. Patent No. 4,442,106 ("U.S. '106 Pat.") to Trijzelaar et al.

Applicants respectfully traverse for the following reasons:

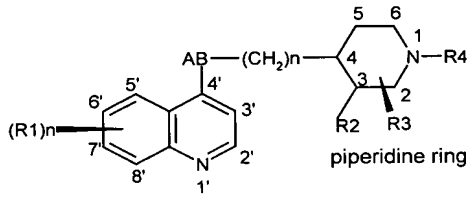
PCT Rule 13.1 states that the international application shall relate to one invention only or to a group of inventions so linked as to form a single general concept (i.e., "requirement of unity of invention").

PCT Rule 13.2 states that unity of invention shall be fulfilled "when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features". It further defines "special technical features" as "those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art".

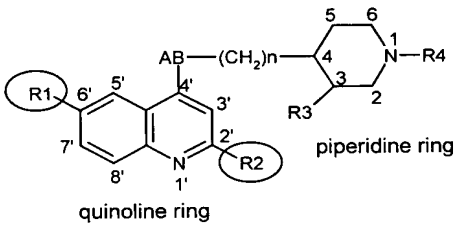
The generic compound structure of formula (I) of the present invention is structually different from the generic compound structure of formula (I) as taught by the U.S. '106 Pat.

The present invention is distinguished from U.S. '106 Pat. as each specification respectively defines a core chemical compound structure with different functional substitutent groups at different positions, as show below:

Applicants' Present Invention



U.S. Pat. '106



For example, U.S. Pat. '106 requires a "R2" substituent at the 2' position of the quinoline ring and a "R1" substitutent at the 6' position of the quinoline group.

In contrast , compounds of Formula (I) of the present invention do not require any substituent group at the 2' position of the quinoline ring and do not require a positionally fixed substituent at the 6' position of the quinoline ring. Instead, compounds of the present invention may have an "$(R1)_n$" substituent, which can be substituted in any of the 5' to 8' positions positions of the quinoline ring (i.e., which may include a 6' position substituent on the quinoline ring).

Therefore, compounds of the present invention are distinguished from those defined in U.S. '106 Pat. reference, which represent compounds of a different chemical scope defined by a core structure with different substituent groups attached in different positions.

In light of this, claims of the present invention define a different chemical compound structure set, do not lack unity under PCT Rule 13.1 and 13.2, but have a "significant structural element" qualifying as a "special technical feature" that defines a contribution over the prior art.

Furthermore, PCT Rule 13.1 includes within the definition of unity of invention "a group of inventions so linked as to form a general inventive concept". Applicants respectfully point out that the claims of the present invention are linked to form a single general inventive concept, i.e., where compounds of Formula (I) of the present invention possess a common structural compound core with specific substitutent groups fixed in specific positions and/or which are limited in number position and type as distinguished from prior art, such as the compounds described in U.S. Pat. '106 as discussed *supra*.

Patentably distinct inventions do not lack unity of invention as long as they derive from the same inventive concept. What is required for a holding of lack of unity is that the inventions be truly "independent". This is the standard for lack of unity applied by the court in *In re Harnish*, 206 USPQ 300, 306 (CCPA 1980) ("unity of invention" ... appl[ies] where *unrelated* inventions are involved") (emphasis supplied). Independent, as defined in MPEP § 802.01, "means that there is no disclosed relationships between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect".

While applicants do not contend that the compounds of the remaining claims are <u>not</u> patentably distinct, the present compounds are so connected as to have arisen from a singular research effort with common shared properties.

Accordingly, claims 1 to 16 of the present invention read upon a plurality of distinct, but related inventions and fully comply with the unity of invention requirement according to the PCT. They cannot, therefore, be further subdivided or restricted and must be included in a single application.

Applicants also indicate that the single mode of action of the compounds of the present invention as antibacterial agents further supports examination of compounds, compositions and methods of use in a single application.

Applicants further note that lack of unity under PCT rules 13.1 and 13.2 were not held during either PCT or EP examination in identical corresponding applications to the present inventions.

Thus, given the limited scope of the genus as described above, the compound claims of the present invention should be considered in a single application.

Therefore, applicants respectfully request that the Examiner withdraw the restriction requirement.

CONCLUSION

In view of the above amendments and remarks, applicants believe that the claims of the present application are in condition for allowance and is earnestly solicited .

If any additional fees or charges are required authorization is hereby granted to charge any necessary fees to Deposit Account No. 19-2570 accordingly.

Should the Examiner have any questions or wish to discuss any aspect of this case, the Examiner is encouraged to call the undersigned attorney at the number below.

Respectfully submitted,

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